

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**DOC# 04CV1063MEL**

**HENRY J. GRAVES, HRG ASSOCIATED  
ALLIANCES REAL ESTATE SCHOOLS INC.**

**V.**

**DENISE R. ALLEN, ET AL**

**DEFENDANT'S MOTION TO DISMISS**

**Pursuant to Rule 12(b) of the Federal Rules of Civil Procedure**

NOW COMES Denise R. Allen, Defendant in the above-referenced action, and requests this Honorable Court to dismiss Plaintiff's Complaint pursuant to Rule 12(b) of the Federal Rules of Civil Procedure. The reasons are set forth as follows:

**DISMISSAL FOR LACK OF SUBJECT MATTER JURISDICTION PURSUANT  
TO 12 (b)1**

1. Plaintiff fails to adequately state the basis for the court's subject matter jurisdiction. The complaint does not contain a federal question or diversity of citizenship of the parties.
2. Plaintiff indicates that this matter involves a cause of action under the "federal RICO Act".<sup>1</sup> However, Plaintiff fails to assert any allegations under the Racketeer Influenced and Corrupt Organizations Act ("RICO", 18 U.S.C.A. §§1961-68).

<sup>1</sup> Co-defendant, Darryl D. Malden, was served a coversheet with the complaint, which listed the notation "federal RICO" cause of action. Denise R. Allen did not receive such a coversheet and Plaintiff does not

3. Where claims are asserted under the RICO Act, the pleader must state his allegations with specificity. O'Ferral v. Trebol Motors Corp., 45 F.3d 561, 562 (1<sup>st</sup> Cir. 1995).
4. All parties are citizens of the Commonwealth of Massachusetts.

**DISMISSAL FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PURSUANT TO RULE 12(b)(6)**

5. Plaintiff states that there are two (2) causes of action that are applicable, namely: (1) a claim under the federal RICO Act and (2) contract law. However, Plaintiff fails to allege sufficient facts to support any cognizable legal claim.
6. Plaintiff's complaint and the allegations alleged therein are frivolous and without merit.

RICO claim

8. Aside from the "federal RICO" notation on the complaint's cover sheet, Plaintiff fails to allege any facts to support a claim under the RICO Act.
9. Many judicial districts, including the First Circuit, require RICO claims to be stated with specificity. Id.

Contract claim:

10. Plaintiff fails to allege sufficient facts to support a claim against Defendant Allen under the laws of contract.
11. Plaintiff and Defendant Allen, as part of a real estate transaction, executed a broker-agreement. Defendant Allen terminated this contract, after she discovered that Plaintiff's broker license had been revoked (see attached Exhibit A).

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state RICO allegations in the body of his complaint. However, despite the ambiguity, the RICO claim is addressed in Denise Allen's Motion to Dismiss.

Defendant terminated the agreement with Plaintiff as a result of his fraudulent misrepresentations. Plaintiff had warranted in writing that he was a licensed broker. Therefore, his contractual allegations are without merit. However, if he elects to challenge Defendant Allen and bring a contracts claim, the proper forum would be the State district court, because the federal court does not have subject matter jurisdiction.

Allegations of defamation of character:

15. In paragraph 26 of his complaint, Plaintiff demands damages and for the first and only time lists the terms "slander" and "defamation of character". Plaintiff does not provide meaningful supporting statements and fails to allege any facts to support a legal claim.
16. WHEREFORE, Defendant requests this Honorable Court to:
  - (a) dismiss Plaintiff's complaint for failure to state a matter over which this court has subject matter jurisdiction;
  - (b) dismiss Plaintiff's complaint for failure to state any legal claims for which relief could be granted; and
  - (c) assess sanctions against Plaintiff, pursuant to Rule 11 of the Fed.R. Civ., for filing a claim that is frivolous and without merit.

Dated: 04/25/04

Respectfully submitted  
Denise R. Allen



Darryl D. Malden, Esq.  
~~Katia Schuster, Esq.~~  
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CERTIFICATE OF SERVICE

I, Katia Schuster, hereby certify that I served a copy of the within Motion to Dismiss to Plaintiff, Henry J. Graves, by delivering/ mailing the same to the following address: 67-69 Devon Street in Roxbury, MA 02121.

Dated: 04/25/04



Katia Schuster, Esq.